

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

TENNER REX HICKMAN

#44978-079

v.

RICK THALER

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C.A. NO. V-11-061

OPINION DENYING MOTION FOR APPOINTMENT OF COUNSEL

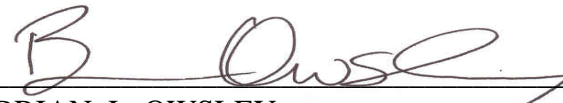
Petitioner is a federal inmate currently incarcerated at the FCI Petersburg Low facility in Petersburg, Virginia who has filed a habeas petition pursuant to 28 U.S.C. § 2254 challenging his state conviction from the 24th Judicial District Court in Jackson County, Texas. (D.E. 1). Pending is petitioner's motion for appointment of counsel. (D.E. 3).

There is no constitutional right to counsel in federal habeas proceedings. Wright v. West, 505 U.S. 277, 293 (1992) (Constitution "guarantees no right to counsel on habeas"); see also Elizalde v. Dretke, 362 F.3d 323, 329 (5th Cir. 2004) (same); Johnson v. Hargett, 978 F.2d 855, 859 (5th Cir. 1992) (same). Rule 8(c) of the Rules Governing § 2254 Cases requires that counsel be appointed if the habeas petition raises issues that mandate an evidentiary hearing. Here, his request for counsel is premature because at this stage in his case there are no factual issues requiring an evidentiary hearing. Indeed, respondent has not yet been served let alone filed an answer.

Counsel will be assigned sua sponte if there are issues that mandate an evidentiary hearing be held. Moreover, the Court may appoint counsel if discovery is ordered and there are issues necessitating the assignment of counsel. See Rule 6(a) of the Rules Governing § 2254 Cases; Thomas v. Scott, 47 F.3d 713, 715 n.1 (5th Cir. 1995).

Accordingly, petitioner's motion for the appointment of counsel, (D.E. 3), is DENIED without prejudice.

ORDERED this 7th day of November 2011.



BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE